

Formal Action # 98-1330-I

IN THE CHANCERY COURT OF TENNESSEE, KNOX COUNTY
SIXTH JUDICIAL DISTRICT AT KNOXVILLE

STATE OF TENNESSEE,
Plaintiff,

v.

MID-SOUTH PCM GROUP, P.C.,
INTERNATIONAL COMPUTERIZED
ORTHOKERATOLOGY SOCIETY, INC.,
EYE AND VISION CLINIC, P.C., and
J. MASON HURT, O.D.,

Respondents.

Petition

John Knox Walkup, Attorney General and Reporter for the State of Tennessee, (hereinafter "Attorney General"), files this Petition pursuant to Tenn. Code Ann. § 47-18-107 of the Tennessee Consumer Protection Act of 1977 (hereinafter "the Act"), and would respectfully show the Court as follows:

1. The Division of Consumer Affairs of the Tennessee Department of Insurance and Commerce (hereinafter "the Division") and the Attorney General, acting pursuant to the Act, have investigated the acts and practices of Mid-South PCM Group, P.C., International Computerized Orthokeratology Society, Inc., Eye And Vision Clinic, P.C., and J. Mason Hurt, O.D.(hereinafter, "Respondents"). Upon

completion of such investigation, the Division has determined that certain of Respondents' acts and practices, more specifically described in Paragraph 2 of this Petition, constitute unfair and deceptive acts or practices affecting the conduct of trade or commerce in the State of Tennessee in violation of Tenn. Code Ann. § 47-18-104(a), and further that such acts and practices constitute violations of Tenn. Code Ann. §§ 47-18-104(a) and (b)(27).

2. Based upon their investigation of Respondents, the Division and the Attorney General allege the following:

(A) Respondents made unsubstantiated claims regarding the effectiveness and approval of certain optometric procedures;

(B) Introducing in Tennessee a contact lens promoted for a type of Orthokeratology prior to submission of a pre-market notification as required by Section 510(k) of the Federal Food and Drug and Cosmetic Act, unless and until pre-market approval or an order of substantial equivalence for that device has been granted by the FDA; and

(C) Using testimonials in advertisements without substantiating the number of consumers who may or have achieved similar results using the same procedure.

(D) Respondent's conduct constitutes an unfair and deceptive act or practice as defined by the Tennessee Consumer Protection Act and interpreting case law.

3. Respondents deny the allegations of Paragraph 2 (A-D).

4. Upon completion of its investigation, the Division requested the Attorney General to negotiate, and if possible to accept, an Assurance of Voluntary Compliance in accordance with the provisions set forth in Tenn. Code Ann. § 47-18-107.

5. The Attorney General entered into negotiations with Respondents and the parties have agreed to, and the Division has approved, the attached Assurance of Voluntary Compliance.

6. In accordance with the provisions of Tenn. Code Ann. § 47-18-107(c), the execution, delivery and filing of the Assurance does not constitute an admission of prior violation of the Act.

7. The Division, the Attorney General, and the Respondents, the parties who are primarily interested in the matters set forth in Paragraph 2 hereof, have jointly agreed to the Assurance of Voluntary Compliance and join in its filing.

PREMISES CONSIDERED, Petitioner prays

1. That this Petition be filed without cost bond pursuant to the provisions of Tenn. Code Ann. §§ 20-13-

101 and 47-18-116.

2. That the Assurance of Voluntary Compliance be approved and filed in accordance with the provisions of the Act.